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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/060,206 04/14/98 FRID-NIELSEN

M 17383-3-2

EXAMINER

LM01/1104

C. GEORGE YU  
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1700 GREEN HILLS ROAD  
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POINTVILLE

ART UNIT

PAPER NUMBER

2768  
DATE MAILED:

11/04/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/060,206

Applicant(s)  
Frid-Nielsen et al.

Examiner  
Frantzy Poinvil

Group Art Unit  
2761



☒ Responsive to communication(s) filed on Aug 30, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

- ☒ Claim(s) 1-42 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 23-31 is/are allowed.
- ☒ Claim(s) 1-22 and 32-42 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 10
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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### **DETAILED ACTION**

1. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 1, lines 5-6, the Examiner suggests changing "an ordinal interval" to --a plurality of ordinal intervals-- in order to prevent indefiniteness and vagueness on line 8 which recites "a selected one of the ordinal intervals--.

As per claim 4, line 2, the Examiner suggest inserting --and-- after "first" to avoid indefiniteness and antecedent basis deficiency since a first second data sets is not previously recited.

### ***Double Patenting***

2. The following non-statutory double patenting rejection is based on a judicially created doctrine grounded in the public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the right to exclude granted by a patent. In re Sarett, 327 F.2d 1005, 140 USPQ 474 (CCPA 1964); In re Schneller, 397 F.2d 350, 158 USPQ 210 (CCPA 1968); In re White, 405 F.2d 904, 160 USPQ 644 (CCPA 1969); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); In re Van Ornam, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 985); and In re Goodman, 29 USPQ 2d 2010 (Fed. Cir. 1993).

Claims 1-21 and 38-42 are rejected under the Judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 11 of U.S. Patent No. 5,519,606.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they recite means or steps that are substantially the same and that would have been obvious to one of ordinary skill in the art.

Specifically, claim 1 of the instant application essentially repeats all the features listed in claim 1 of the patent. The only obvious difference between the application and the patent is that claim 1 of the application is worded in somewhat different language than that of claim 1 of the patent. Thus, these mere obvious differences are trivial changes that would have been obvious to a skilled artisan. Thus, the claimed means for reconciling are equivalent to the means for combining of the patent.

Specifically, claims 2, 3-5, 12-14 and claims (39, 39, 41 and 42) of the instant application essentially repeats all the features listed in claim 11 of the patent. The only obvious difference between the application and the patent is that claims 3-5 of the application are worded in somewhat different language than that of claim 11 of the patent. Thus, these mere obvious differences are trivial changes that would have been obvious to a skilled artisan.

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Claims not directly addressed are also obvious because merely trivial changes using artful language not having patentable distinction from US patent no. 5,519,606 are recited and therefore are rejected under the Judicially created doctrine of obviousness-type double patenting.

3. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) would overcome an actual or provisional rejection on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application.

3.


### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil, whose telephone number is (703) 305-9779. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

The fax phone number for this Art Unit is (703) 305-0040.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

FP  
03Nov99

  
**Frantzy Poinvil**  
**Primary Examiner**  
**Art Unit 2761**